

IN THE UNITED STATES DISTRICT COURT
FOR
THE THIRD CIRCUIT

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OCT 16 2017

UNITED STATES OF AMERICA

*

Chambers of
Anne E. Thompson, U.S.D.J.

v.

*

Civil No.: 17-2641
Criminal No.: 3:12-cv-204-01

C. TATE GEORGE

*

Petitioner

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OCT 20 2017

* * *

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

**PETITIONER'S SECOND REQUEST FOR LEAVE TO AMEND
MOTION TO VACATE, SET ASIDE OR CORRECT CONVICTION
AND SENTENCE PURSUANT TO 28 U.S.S. SECTION 2255 WITH AFFIDAVIT**

NOW COMES the Petitioner C. Tate George, pro se, and requests this Honorable Court for leave to amend his pending motion pursuant to 28 U.S.C. Section 2255, and states as follows:

I. Ineffective Assistance of Counsel

Trial attorney David Shafer's performance was deficient because he failed to perform **ANY** pre-trial review and investigation of the decipherable pre-trial discovery information supplied by the government which included the "**signed**" release form that government witness Ramsey falsely testified to at trial was not signed by him! Consequently, this egregious deficient performance was objectively unreasonable making it impossible for him to impeach any government witness including Mr. Ramsey! As a result, Petitioner's constitutional right to the "effective" assistance of counsel under the Sixth Amendment was violated and he was deprived of a fair trial. Period.

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District	New Jersey
Name (under which you were convicted):		C. Tate George	
		Docket or Case No.:	17-2641
Place of Confinement:		Foot Dix	
		Prisoner No.:	63223-050
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
		C. Tate George	

MOTION

[ORIGINAL]

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

CLARKSON S. Fisher Building & U.S. Court house 402
East State Street Trenton, N.J. 08608

- (b) Criminal docket or case number (if you know): 16-1170

2. (a) Date of the judgment of conviction (if you know): September 30, 2013

- (b) Date of sentencing: JANUARY 10, 2015

3. Length of sentence: 9 years

4. Nature of crime (all counts): 4 counts of wire fraud

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CLERK

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: 3rd Circuit Court of Appeals

(b) Docket or case number (if you know): 16-1170

(c) Result: Affirm conviction and sentence

(d) Date of result (if you know): April 5, 2017

(e) Citation to the case (if you know):

(f) Grounds raised: Brady violation (multiple), methodology, concealment of exculpatory and impeaching evidence by the Gov't. District of discretion in sealing forensic report and plain error at sentencing, lack of creditability on the part of the Gov't own Agent witness at trial and at sentencing, no probable cause for an arrest, perjury of Gov't witness AND LACK OF DUE PROCESS FOR A FAIR TRIAL.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Asst. of Counsel pre-trial by not ordering A Forensic Accounting of All plaintiffs development project.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense Counsel Flat out REFUSE to ORDER A much needed Forensic Business Report because he believed that the Gov't theory was correct (that the defendant was guilty) when they arrested Plaintiff on "Nothing existed"; that no projects were legitimate (Real Estate projects); even AFTER plaintiff requested A Forensic Report to be completed at least 3 times prior to trial. A Forensic Report would have easily showed that All projects existed, there was no Fraudulent Activity and no monies were spent outside of normal business practices. Also, this lack of A Report prohibit defense from calling Key witnesses at trial for all existing development projects.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why. I was told by the court I could not ARGUE for Ineffective Assistance of Counsel on direct Appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I was told by the Court I could not argue for ineffective ASst. of counsel on direct Appeal

GROUND TWO: *Ineffective ASst. of counsel at trial due to LACK of preparation of vital evidence and LACK of legal issues that remain in dispute.*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense counsel did not understand any of the evidence prior to trial, and even worse during closing argument confused the Jury by not recalling the NAMES of existing real estate development projects. Furthermore, LACK of identifying factual and legal issues that would dispute Gov't partial evidence at trial and at sentencing. Again, the requested forensic report would have proven that there was no relative offenses of loss to investor's or business Partner's at trial and post trial. More than 3000 documents were left out of trial by defense counsel. Defense counsel never devised a reasonable defense strategy to provide adversarial testing of the Gov't case.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: *UNABLE TO ARGUE ON DIRECT
APPEAL A CASE FOR INEFFECTIVE ASST. OF COUNSEL.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *Unable to argue ineffective Asst. of counsel one direct appeal*

DELETE

GROUND THREE: *Ineffective Asst. of Counsel for Lack of conducting a reasonable investigation of Gov't witnesses; including efforts to properly secure key trial evidence.*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense Attorney mis-lead the Plaintiff by claiming he reviewed all exculpatory and impeaching evidence prior to trial. [He also never informed Plaintiff or the Court that he could not read evidence provided in full context provided by the Gov't literally days before trial and during trial. Example: Defense Attorney's (team) reviewed vital evidence from the Gov't in or around July 2013 and sent an email requesting information on blocked disks of evidence; then in Sept. (just days before trial) did a follow up on why the evidence was still unreadable. This error ~~led~~ hampered the defense as they were unable to review key evidence prior to trial. Again, never informing the defendant or the Court of its troubles regarding important exculpatory and impeaching evidence.]

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

→ see Attachment

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Revision of Ground three:

Trial Attorney David Schafer's performance was deficient because he failed to perform proper pre-trial review and investigation of the decipherable pre-trial discovery information supplied by the Government and previous defense Attorney John Kaley; which included but not limited to the signed release form attached to the First Petitioner's request 2255. This release form "signed" by one of the Government's key witness Ramsey who falsely testified to at trial that he never signed this release which allowed defendant to release funds to advance a closing which was a legal transaction. Consequently, this as well as many more egregious deficient performance was objectively unreasonable making it impossible for him to impeach any government witnesses including Mr. Ramsey. As a result, Petitioner's constitutional right to the "effective" assistance of counsel under the Sixth Amendment was terribly violated and he was deprived of a fair trial. Period!!

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *UNABLE to ARGUE ineffective ASST. of counsel on direct appeal.*

GROUND FOUR: *Ineffective ASST. of Counsel For Lack of Full Investigation of defense witnesses and Gov't witnesses prior to trial.*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

DEFENSE COUNSEL Just days before trial contacted the defendant, for the defendant to provide questions to the defense counsel of the Gov't witnesses but, when asked who the Gov't witnesses are, defense attorney admitted in writing that he was unsure. This lack of investigation destroyed the defendant's chance at a fair trial. This lack of preparation by the attorney's lead to him putting in partial (incomplete) vital business partnership agreements at trial, as well as leaving off pages of contracts that would have easily impeached all Gov't witnesses. (See motion under Rule 33 hearing of evidence left out of trial—which consist of 17 - 3 1/2 Binders of impeaching and exculpatory evidence available to the defense legal team but due to the lack of preparation was left out of the trial.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: *Unable to Argue
Ineffective Asst. of Counsel on direct appeal.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *Could not argue on direct appeal.*

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: *I have not argued for ineffective ASst. of Counsel in Federal court. It was told to me by the district court that I could not argue on the grounds on direct appeal.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of

proceeding, and the issues raised. *Case pending in the 3rd Circuit Court on a civil matter, docket number 16-4269.*

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea: *DAVID SHAFER*

(c) At trial: *DAVID SHAFER*

(d) At sentencing: *PRO'SE (most of the way at this point)*

(e) On appeal: *Pro se*

(f) In any post-conviction proceeding: *Pro se*

(g) On appeal from any ruling against you in a post-conviction proceeding: *Pro se*

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: *motion to vacate,
set aside or correct conviction and sentencing pursuant
to 28 U.S.C. Section 2255*
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on July 12th 2017 (date).


Signature of Movant

I declare (or certify, verify, or state) under penalty of perjury that I have been notified that I must include in this motion all the grounds for relief from the conviction or sentence that I challenge, and that I must state the facts that support each ground. I also understand that if I fail to set forth all the grounds in this motion, I may be barred from presenting additional grounds at a later date.

Executed (signed) on

July 12th 2017
(date)

Signature of Movant

[Signature]

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.